Supreme Court, U.S.
FILED
JAN 12 1981
MICHAEL RODAK, JR., CLERK

80-1179

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

TERM 1981

ROBIN ELAINE MATHEWS,
Petitioner,
vs
THE HONORABLE J. RICHARD HANNAH, Pima County Superior Court Judge; and
STATE OF ARIZONA
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE ARIZONA SUPREME COURT

By: Thomas G. Cox
J. Patrick Butler
4301 E. Fifth Street
Tucson, Arizona 85711
(602) 795-8200
Attorneys for Petitioner

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QUESTIONS PRESENTED

I. WHETHER SPEEDY TRIAL TIME LIMITS COMMENCE AT THE TIME OF A JUVENILE'S ARREST AND INCARCERATION OR UPON TRANSFER TO ADULT JURISDICTION?

II. WHETHER SEVENTY-EIGHT (78) DAYS SPENT INCARCERATED BY A JUVENILE WHILE A TRANSFER HEARING WAS PENDING MUST BE CONSIDERED IN DETERMINING SPEEDY TRIAL TIME LIMITS WHERE DURING THAT TIME THE JUVENILE HAD NO RIGHT TO BAIL OR DISCOVERY?

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ROBIN ELAINE MATHEWS,

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vs.

THE HONORABLE J. RICHARD HANNAH, Pima County Superior Court Judge; and STATE OF ARIZONA,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE ARIZONA SUPREME COURT

The Petitioner, Robin Elaine Mathews respectfully prays that a writ of certiorari issue to review the decision of the Arizona Supreme Court entered in this proceeding on November 13, 1980.

OPINION BELOW

The Arizona Supreme Court did not render an opinion in its denial of Petitioner's Request for Review of the decision of the Arizona Court of Appeals finding that the trial court did not abuse its discretion in denying Petitioner's Motions to Dismiss.

JURISDICTION

A Special Action was taken from the trial court's decision of August 4, 1980, denying Petitioner's Motions for Dismissal on speedy trial and misconduct of prosecution grounds. The Arizona Court of Appeals on September 23, 1980, found that the trial court did not abuse its discretion in denying said Motions. Petitioner's timely motion for rehearing was denied by the Court of Appeals on October 23, 1980. A timely Request for Review to the Arizona Supreme Court was denied on November 13,

1980. This Petition for Certiorari has been filed within sixty days (60) of that date. This court's jurisdiction is invoked under 28 U.S.C. Sec. 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

Sixth Amendment of the United States Constitution:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of Counsel for his defence."

Fourteenth Amendment, Section One:

> "All persons born or naturalized in the United States, subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges of immunities of citizens of the United States; nor shall any state deprive any person of life,

liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (See Appendix for Provisions of the Arizona Rules of Criminal Procedure and Arizona Rules of Juvenile Court)

STATEMENT OF THE CASE

Petitioner is the Defendant in the Arizona Superior Court case of State v. Robin Mathews. Respondent, the Honorable J. Richard Hannah, is the trial judge who, on August 4, 1980, heard and denied Petitioner's Motions to Dismiss on speedy trial and prosecutorial misconduct grounds. The other Respondent, the State of Arizona, is the prosecution in the above case.

The case arises out of the following facts. Robin Mathews was arrested on January 15, 1980, on two counts of armed robbery alleged to have occurred on December 24, 1979. At the time of her arrest Robin was under seventeen and a half years old. She was taken into custody by

the Tucson Police Department and transported to the detention center at the Pima County Juvenile Court Building. The detention center is a custodial facility for juveniles, and is in all significant respects similar to a jail. On the following day, January 16, 1980, the State filed a delinquency petition charging Robin with armed robbery, attempted armed robbery and theft of property valued at greater than one hundred dollars. Also on January 16, 1980, the State filed a petition to transfer the case to adult jurisdiction. Robin was incarcerated, without possibility of release on bail, pending the outcome of the proceedings.

In Arizona, the transfer proceedings consist of two parts. The first stage requires a hearing to determine whether there is probable cause to believe that the juvenile committed the acts charged. The second stage requires a hearing on the

amenability of the juvenile to treatment within the juvenile court facilities. (See Appendix VI , Rules of Procedure of Juvenile Court) Under Rule 14 of the Arizona Rules of Juvenile Procedure, the court must find that there is probable cause to believe that the juvenile has committed the offense and that the juvenile is not amenable to treatment within the juvenile court system before the juvenile's case may be transferred to adult jurisdiction.

On February 19, 1980, the Juvenile Court Judge, the Honorable Lilian Fisher found that there was probable cause to believe that Robin had committed the crimes of armed robbery and attempted armed robbery. The probable cause hearing on the theft charge was continued until March 20, 1980, on the Court's own motion, but was reset by the court ex parte for February 27, 1980, before a different judge. Both the county attorney and defense counsel

objected to having a new judge hearing the continued matter. It was subsequently reset before Judge Fisher on March 31, 1980. Because of the long delay, defense counsel filed an appeal of the order detaining Robin on February 9, 1980. The potential prejudice to Robin because of the delay was pointed out in that motion. The motion for release was heard by Juvenile Referee Ferlanto on March 7, 1980, and taken under advisement. The motion was denied March 10, 1980, and that same day an appeal of the decision was filed. The appeal was heard and denied by Judge Pro Tem Berlat on March 17, 1980. On March 31, 1980, the court found that there was not probable cause to believe that Robin committed the offense of theft of property over one hundred dollars. The same day the judge continued the hearing on amenability on the other two charges until April 2, 1980.

On April 2, 1980, Judge Fisher ordered

Robin transferred to Adult Jurisdiction. On April 3, 1980, Robin was transferred to a solitary confinement cell at the Pima County Jail. She was kept in solitary confinement because the jail has no other facilities and the Arizona Constitution prohibits juveniles from being incarcerated in the same section of the jail as adult prisoners. Arizona Constitution, Article 22, Section 16.

Bond was set at $11,000.00 and that trial was scheduled for July 8, 1980. A motion to modify the conditions of release based on the grounds that Robin's incarceration in solitary confinement solely because she was a juvenile constituted a violation of the state and federal constitutions was denied. After Robin spent three weeks in solitary confinement, her father was able to post the bond.

While Robin was held in solitary confinement, the morning paper for Tucson, the

Arizona Daily Star, ran a front page story in its Sunday edition on her predicament. In that article the Deputy Pima County Attorney in charge of the case was quoted as stating that if people were familiar with the juvenile's background they would not be sympathetic to her situation.

Robin's only previous delinquency adjudication had resulted from the theft of a $3.00 steak.

On August 4, 1980, motions to dismiss the indictment based on speedy trial violations and prosecutorial misconduct were denied by the trial court. (See Appendix I) The basis for the speedy trial motion was the delay of 175 days between the date of Robin's arrest and her first trial date, July 8, 1980. Robin was incarcerated in the Juvenile Detention Center facility from January 15, 1980, to April 3, 1980, and in a solitary confinement cell at the Pima County Jail from April 3, 1980, until after

April 28, 1980. The motion to dismiss on prosecutorial misconduct was based on the improper remark of the Deputy Pima County Attorney printed in the local paper.

The trial judge denied both motions from the bench after hearing oral argument. No formal written opinion was rendered. (See Appendix I)

A special action was timely filed with the Arizona Court of Appeals alleging that the trial judge abused his discretion in denying the motions to dismiss. The Court of Appeals held that there was not an abuse of discretion. (See Appendix II) A timely Motion for Rehearing was filed and denied. (See Appendix IV) A timely Re-question for Review to the Arizona Supreme Court was filed and denied. (See Appendix III) The Petitioner is presently released on bond awaiting trial.

REASONS FOR GRANTING THE WRIT

Robin Mathews was incarcerated for two and one half months without the possibility of bail, pending the decision on whether the State would be allowed to prosecute her as an adult, without the protection afforded by the Sixth Amendment right to a speedy trial. If Robin were an adult the time in which the State would have had to bring her to trial would have started at the time of her incarceration. Arizona Rules of Criminal Procedure 8.2; see also U.S. v. Marion, 404 U.S. 307 (1971). the sole reason for this unjust difference in treatment is that Arizona denies a speedy trial right to juveniles whom the State attempt to prosecute as adults.

In In re Gault, 387 U.S. 1 (1967), this Court recognized the right of juveniles in criminal proceedings to certain due process protections. While Gault did not involve the right to a speedy trial,

the opinion dealt with certain guarantees found to be fundamental to due process. The right to a speedy trial is such a fundamental right and should now be recognized as one of the procedural protections which must be afforded juveniles facing criminal charges.

The fundamental nature of the right to a speedy trial has long been established. In United States v. Ewell, 383 U.S. 116 (1966), the Court recognized the important nature of the right to a speedy trial, and in Kolfer v. North Carolina, 396 U.S. 213 (1967), the Court applied the Sixth Amendment right to a speedy trial to the states, stating "the history of the right to a speedy trial and its reception in this country clearly establishes that it is one of the most basic rights preserved by our Constitution." In Moore v. Arizona, 414 U.S. 25 (1973), this Court in a per curiam decision held that the right to a speedy

trial was so fundamental that a showing of prejudice to the defense was not necesarily essential to establish a federal speedy trial violation claim. The drafters of the Arizona Constitution also recognized the fundamental nature of the right to a speedy trial. Arizona Constitution, Article 2, Section 11; and Article 2, Section 24.

While not every procedural protection afforded adults can be, or should be, afforded juveniles, this Court has held that those protections necessary to a fundamentally fair trial do apply to juveniles. Kent v. United States, 383 U.S. 541, 562 (1966), In re Gault, 387 U.S. at 30. In McKeiver v. Pennsylvania, 403 U.S. 528 (1971), the Court stated that the applicable due process standard in judging juvenile proceedings was fundamental fairness, and that prior cases had emphasized accurate fact finding procedure. 403 U.S.

at 543. It is apparent that the speedy trial right is necessary for fundamental fairness and underlies all of the accurate fact finding procedures granted to juveniles in Gault. One state court has gone so far as to say that without recognition of a juvenile's right to a speedy trial, the safeguards announced in Gault would be emasculated. Piland v Clark County Juveniles Court Services, 457 P.2d 523, 525 (Nev. 1969).

The importance to juveniles of the right to a speedy trial has been recognized by numerous lower courts. Indeed the state courts which rule on the question since Gault have come out strongly in favor of recognizing a juvenile's right to a speedy trial. See Piland v. Clark Court Juvenile Court Services, supra; In the Matter of Edward W, 89 Misc2d 570, 392 NYS2d 208 (1977); KM v. Baker, 36 SO2d 133 (Fla App. D.4, 1979); LLS v. State, 565 SW2d 252

(Tex 1978). The federal courts have also held or assumed that the right to a speedy trial applies to juveniles. See Tremble v. Stone, 187 F.Supp. 483, 486 (D.C. 1960), and 18 U.S. Sec. 5036.

While the constitutional guarantee of a right to a speedy trial is not encompassed by specific time limits, there is a specific date upon which the requirement is invoked. In United States v. Marion, 404 U.S. 307 (1971), the Court held that the speedy trial provisions of the Sixth Amendment were invoked at the time the defendant is subject to the restraints imposed by arrest and being held to answer to a criminal charge. 404 U.S. at 320-321.

Arizona law is in direct contrast with Marion. Where the defendant happens to be a juvenile, in Arizona, the time a juvenile spends incarcerated awaiting completion of the transfer proceedings is not included in determining speedy trial time limits. In-

stead, at least two Arizona courts have held that the speedy trial time limits of the Arizona Rules of Criminal Procedure do not begin to run until the matter is actually transferred to adult jurisdiction, regardless of how much time the juvenile has been incarcerated prior to the transfer. See State v. Myers, 116 Ariz. 453, 469 P.2d 1351 (1977); State v. Roberson, 118 Ariz. 343, 576 P.2d 531 (App. 1978). The reasoning of these two cases ignores the fact that the right to a speedy trial arises from the constitution and not the Rules of Criminal Procedure, which were enacted to carry out the procedural safeguards set forth in the Sixth Amendment. The result is that a juvenile whom the State attempts to treat as an adult may be incarcerated for, as in this case, two and a half months, without any speedy trial time limits applying, where an adult under the same set of circumstances would be protected by the

Sixth Amendment right to a speedy trial starting from the first day of incarceration. There is no justification for this distinction.

In McKeiver v. Pennsylvania, 403 U.S. 528 (1971), this Court declined to impose the requirement of a jury trial on the juvenile system. The reasons given by the Court for that decision shed considerable light on what the outcome should be in this case. The Court initially noted that if a jury trial was required as a matter of constitutional right, it would "remake the juvenile proceeding into a fully adversary process and. . . put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding." This undesirable result would not occur were the Court to hold that the right to a speedy trial applied in this type of case. In this situation, the "intimate, informal, protective proceeding," has already been lost by the State's attempt to transfer the

juvenile into the adult criminal process, thus there is nothing to lose by providing the juvenile with the same rights that an adult accused would have.

Also significant to the Court's decision in McKevier was its conclusion that a jury trial was not a necessary component of accurate fact finding, unlike those procedural protections afforded juveniles in In re Gault. See 403 U.S. at 543. Such a concern for accurate fact finding argues in favor of granting a speedy trial right in these circumstances. Robin Mathews was confined without the possibility of bail for two and one-half months, during which time she was unable to actively assist her counsel in investigation of the facts of the case. In addition, the Arizona Rules of Procedure for Juvenile Court do not make any provisions for discovery for defense counsel during the pendency of the transfer proceedings. Unlike an adult accused of a

crime, who would be furnished with copies of police reports and witnesses' statements during the two and one-half months following arraignment, Robin Mathews was afforded no disclosure whatsoever. Such a delay in discovery puts a juvenile at a serious disadvantage when compared to an adult facing similar charges.

In McKeiver, the Court described what it attempted to achieve in Gault by referring to the opinion of a state court applying that landmark case, Commonwealth v. Johnson, 211 Pa. Super. 62, 74, 234 A2d 15 (1967):

> "It is clear to us that the Supreme Court has properly attempted to strike a judicious balance by injecting procedural orderliness into the juvenile court system. It is seeking to reverse the trend [pointed out in Kent, 383 U.S. at 556] whereby "the child received the worst of both worlds. . . ."

403 U.S. at 545. It is just such an exposure to the "worst of both worlds" that is at the heart of this Petition. Under

current Arizona law a juvenile whom the state seeks to transfer to adult prosecution is denied the benefits of the flexible and informal juvenile system, but at the same time, because she is a juvenile, is denied the basic protections offered by the adult criminal justice system. It was just that kind of arbitrariness that Gault and its progency attempted to avoid.

Petitioner is not seeking to impose a rigid time constraint upon the juvenile adjudication process. Rather, she merely seeks a rule that when the State attempts to thrust a juvenile into the criminal process, thereby depriving her of the advantages of the juvenile system, it must at that point provide those procedural protections, such as the right to a speedy trial, which are accorded adults charged with similar crimes.

The constitutional safeguards of Gault are of little use to a juvenile who faces

prosecution in the adult criminal system. The evil remedied in Gault was that the juvenile was denied fundamental protections routinely provided hardened adult criminals on the simple ground of his age. That is precisely the evil present in this case, and it is to remedy such evil that this Court should grant the Petition for Writ of Certiorari.

WHEREFORE, it is respectfully requested that a Writ of Certiorari issue to review the decision of the Arizona Supreme Court.

SUBMITTED this 8th day of January, 1981.

Thomas G. Cox
4301 E. Fifth Street
Tucson, Arizona 85711
Attorney for Petitioner

J. Patrick Butler
4301 E. Fifth Street
Tucson, Arizona 85711
Admission to United States
Supreme Court applied for

6

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

JUDGE/~~COURT COMMISSIONER~~

NO. CR-03172

DATE Aug. 4, 1980

STATE OF ARIZONA, PLAINTIFF

Barbara LaWall PLAINTIFF'S ATTORNEY

ROBIN ELAINE MATHEWS, DEFENDANT

J. Patrick Butler DEFENDANT'S ATTORNEY

MINUTE ENTRY

HEARING ON DEFENDANT'S MOTIONS TO DISMISS:

Defendant not present. James J. Curnyn reporting.

Filed in court: Reply to Oppositions to Motions to Dismiss.

Counsel argue to the Court.

IT IS ORDERED that the motion to dismiss based on prosecutorial misconduct is denied.

IT IS FURTHER ORDERED that the motion to dismiss for failure to comply with speedy trial rule is denied.

cc: County Attorney - LaWall

Russo, Cox, Dickerson & Sylvester

Hon. J. Richard Hannah

Court Administrator

By Pat Moyer
Deputy

CA-3172

FILED
SEP 23 1980
CLERK COURT OF APPEALS
Division Two

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ROBIN ELAINE MATHEWS,

Petitioner,

vs.

THE SUPERIOR COURT OF PIMA COUNTY, The Honorable J. RICHARD HAMNAH,

and

THE STATE OF ARIZONA, Real Party in Interest,

Respondents.

ORDER

2 CA-CIV 3726

(Pima County Superior Court Cause No. CR-83172)

FILED

JAMES D. T. Clerk

James D. Hathaway

The above-entitled Special Action having been taken under advisement, and it appearing that the Respondent Court, The Honorable J. Richard Hannah, did not abuse his discretion or act in excess of his jurisdiction, this Court declines to accept jurisdiction;

IT IS ORDERED that the Petition is DENIED.

Dated: September 24, 1980.

James D. Hathaway
James D. Hathaway,
Chief Judge.

Lawrence Howard
Judge.

James L. Richmond
James L. Richmond,
Judge.

STATE OF ARIZONA)
COURT OF APPEALS) ss.
DIVISION TWO)

I, Kenneth Foster, Clerk of the Court of Appeals of the State of Arizona, Division Two do hereby certify that I have compared the foregoing

ORDER

with the original on file in this office and that it is a correct transcript therefrom and of the whole thereof.

WITNESS my hand and the seal of this office this 23 day of September, 1980.

Clerk

-2-

2 CA-CIV 3706
MATTHEWS v. SUP. CRT.: STATE
ORDER
P. 2

Copy of the foregoing
mailed this 13 day of
September, 1978, to:

Brown, Cox, Blakeman & Sylvester, P.C.
J. Patrick Butler, Esq.
4301 East Fifth Street
Tucson, AZ. 85711

The Honorable Stephen D. Neely
County Attorney, Pima County
Ms. Barbara LaWall, Deputy County Attorney
Mark B. Zukowski, 2(b) Law Student
900 County Building
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The Honorable J. Richard Bransh
Judge of Superior Court
Pima County
Division Twelve
Tucson, AZ. 85701
(Trial Copy)

James H. Corbett, Esquire
Clerk of Superior Court
Pima County
Tucson, AZ. 85701
(Certified Copy)

Ms. Edna H. Black
Court Coordinator
Pima County Superior Court
711 West Congress Street
Tucson, AZ. 85701

MARYANN HOPKINS-YOUNG
CLERK

Supreme Court

STATE OF ARIZONA
201-WEST WING
CAPITOL BUILDING
Phoenix 85007

TELEPHONE
255-4536

November 14, 1980

ROBIN ELAINE MATHERW,

Petitioner,

vs.

THE SUPERIOR COURT OF PIMA COUNTY, The Honorable J. RICHARD HANNAH,

and

THE STATE OF ARIZONA, Real Party in Interest,

Respondents.

Supreme Court
No. 15145-PR

Court of Appeals
No. 2 CA-CIV 3726

Pima County
No. CR-03172

The following action was taken by the Supreme Court of the State of Arizona on November 13, 1980 in regard to the above-entitled cause:

"ORDERED: Petition for Review - DENIED."

Record returned to the Court of Appeals, Division Two, Tucson, this 14th day of November, 1980.

MARYANN HOPKINS-YOUNG, Clerk

By Anna L. Cates
Chief Deputy Clerk

TO:
J. Patrick Butler, Esq., Russo, Cox, Dickerson & Sylvester, 4301 E. Fifth Street, Tucson, Arizona 85711
Stephen D. Neely, Pima County Attorney, 111 West Congress, Tucson, Arizona 85701 Attn: Barbara LaWall, Deputy County Attorney
Hon. J. Richard Hannah, Judge, Pima County Superior Court, Pima County Courthouse, Tucson, Arizona 85701
Elizabeth Urwin Fritz, Clerk, Court of Appeals, Division Two, 415 West Congress, Tucson, Arizona 85701

Court of Appeals
STATE OF ARIZONA
DIVISION TWO
STATE OFFICE BUILDING
415 WEST CONGRESS
TUCSON, ARIZONA 85701

CHIEF JUDGE
JAMES D. HATHAWAY
JUDGES
LAWRENCE HOWARD
JAMES L. RICHMOND

ELIZABETH URWIN FRITZ
CLERK
ROSEMARY D. TINDALL
CHIEF DEPUTY
TELEPHONE (602) 882-5510

November 24, 1980

James N. Corbett, Clerk
Pima County Superior Court
Pima County Courts Building
111 West Congress Street
Tucson, Arizona 85701

Dear Mr. Corbett:

RE: No. 2 CA-CIV 3726
MATHEWS v. SUPERIOR COURT; HON. HANNAH; STATE OF ARIZONA
Pima County Superior Court Cause No. CR-03172

On September 23, 1980, a certified copy of this Court's Order denying the Petition for Special Action filed in the above-entitled cause on September 23, 1980, was forwarded to your office.

Request for Rehearing [Motion for Rehearing] was filed on October 6, 1980; Opposition to Request for Rehearing was filed October 14, 1980; and, on October 23, 1980, by Order of this Court, the Request for Rehearing was DENIED. Petition for Review by the Supreme Court as filed October 27, 1980, and on November 13, 1980, the Arizona Supreme Court DENIED the Petition for Review.

Yours very truly,

ELIZABETH URWIN FRITZ, Clerk
Court of Appeals, Div. Two

By Renee Lappin
Deputy Clerk

Copies to:

Hon. Stephen D. Neely
Pima County Attorney
900 Pima County Courts Building
111 West Congress Street
Tucson, Arizona 85701
Attn: Barbara LaWall
Deputy County Attorney

Bosso, Cox, Dickerson & Sylvester, P.C.
4301 East Fifth Street
Tucson, Arizona 85711
Attn: J. Patrick Butler, Esq.

Hon. J. Richard Hannah, Judge
Pima County Superior Court, Div. 12

ARIZONA RULES OF CRIMINAL PROCEDURE

RULE 8. SPEEDY TRIAL

Rule

8.1 Priorities in scheduling criminal cases.
8.2 Time limits
8.3 Right to speedy trial of persons in prison within or without the state.
8.4 Excluded periods.
8.5 Continuances.
8.6 Denial of speedy trial.

Rule 8.1 Priorities in scheduling criminal cases

a. **Priority of Criminal Trials.** The trial of criminal cases shall have priority over the trial of civil cases.

b. **Preferences.** The trial of defendants in custody and defendants whose pretrial liberty may present unusual risks shall be given preference over other criminal cases.

c. **Duty of Prosecutor.** The prosecutor shall advise the court of facts relevant to determining the order of cases on the calendar.

d. **Duty of Defense Counsel.** The defendant's counsel shall advise the court of the impending expiration of time limits in the defendant's case. Failure to do so may result in sanctions and should be considered by the court in determining whether to dismiss an action with prejudice pursuant to Rule 8.6.

e. **Extraordinary Cases.** Within five days after the arraignment in Superior Court either party may apply in writing to the court for a hearing to establish extraordinary circumstances requiring the suspension of Rule 8 in a particular case. Within five days of the receipt of the application the court shall hold the hearing and make findings of fact. The findings shall be immediate-

ly transmitted to the Chief Justice who may approve or decline to approve them. Upon approval of the findings by the Chief Justice, they shall be returned to the trial court where upon motion of either party the trial court may suspend the provisions of Rule 8 and reset the trial date for a time certain.

Amended May 7, 1975, effective Aug. 1, 1975.

RULE 8.2 Time limits

a. **All Defendants.** Every person against whom an indictment, information or complaint is filed shall be tried by the court having jurisdiction of the offense within 150 days of the arrest or service of summons under Rule 3.1 except for those excluded periods set forth in Rule 8.4 below.

b. **Defendants in Custody.** Every person held in custody in this state on a criminal charge shall be tried by the court having jurisdiction of the offense within 120 days from the date of his initial appearance before a magistrate on the complaint, indictment, or information, or within 90 days from the date of his arraignment before the trial court, whichever is the lesser.

c. **Defendants Released from Custody.** Every person released under Rule 7 shall be tried by the court having jurisdiction of the offense within 120 days from the date of his initial appearance before a magistrate on the complaint, indictment, or information, or within 90 days from the date of his arraignment before the trial court, whichever is the greater.

d. **New Trial.** A trial ordered after a mistrial, upon a motion for new trial, or upon the reverals of a judgment by an Appellate Court shall commence within 60 days of the entry of the order of the court or service of the mandate of the Appellate Court.

e. **Extension of Time Limits.** These time

PREVIOUS PAGE WAS BLANK

limits may be extended pursuant to Rule 8.5. They may not be extended by stipulation or waiver except that, if the defendant is not in custody, the trial court may permit one 30-day extension by stipulation of all parties to a certain trial date.

Amended May 7, 1975, effective Aug. 1, 1975.

RULE 8.3 Right to a speedy trial of persons in prison within or without the state

a. Person Without the State. Within 90 days after receipt of a written request from any person charged with a crime and incarcerated without the state, or within a reasonable time after otherwise learning of such person's incarceration without the state, the prosecutor shall take action as required by law to obtain such person's presence for trial. Within 90 days after the defendant has been delivered into the temporary custody of the appropriate authority of this state, he shall be brought to trial.

b. Persons Within the State.

(1) Any person who is imprisoned in this state may request final disposition of any untried indictment, information or complaint pending against him in this state. The request shall be in writing addressed to the court in which the charge is filed and to the prosecutor charged with the duty of prosecuting it, and shall set forth the place of imprisonment.

(2) Within 30 days after a detainer has been filed against a prisoner incarcerated within this state, the prosecutor charged with the duty of prosecuting the charge from which the detainer results, shall inform him of the detainer and of his right to request its final disposition under Rule 8.3(b)(1)

(3) Within 90 days after sending such a request to the court and prosecutor, the

prisoner shall be brought to trial upon the charge.

(4) The escape from custody of a prisoner subsequent to his request for final disposition of an untried indictment, information, or complaint shall void the request.

RULE 8.4 Excluded periods

The following periods shall be excluded from the computation of the time limits set forth in Rules 8.2 and 8.3:

(a) Delays occasioned by or on behalf of the defendant, including, but not limited to, delays caused by an examination and hearing to determine competency, the defendant's absence or incompetence, or his inability to be arrested or taken into custody in Arizona.

(b) Delays resulting from a remand for new probable cause determination under Rules 5.5 or 12.9.

(c) Delays necessitated by congestion of the trial calendar, but only when the congestion is attributable to extraordinary circumstances, in which case the presiding judge shall promptly apply to the Chief Justice of the Arizona Supreme Court for suspension of any of the Rules of Criminal Procedure.

(d) Delays resulting from continuances in accordance with Rule 8.5, but only for the time periods prescribed therein.

(e) Delays resulting from joinder for trial with another defendant as to whom the time limits have not run when there is good cause for denying severance. In all other cases, sever-

ance should be granted to preserve the applicable time limits.

Amended May 7, 1975, effective Aug. 1, 1975; amended and effective Nov. 3, 1975.

RULE 8.5 Continuances

a. Form of Motion. A continuance within the time limits of Rule 8.2(b) and (d) may be granted only upon written motion, stating with specificity the reasons justifying it, and a certificate of the signer that it is made in good faith.

b. Grounds for Motion. A continuance shall be granted only upon a showing that extraordinary circumstances exist and that delay is indispensible to the interests of justice. A continuance may be granted only for so long as is necessary to the interests of justice, and in no case for longer than 30 days.

c. Other Continuances. No further continuances shall be granted except as provided in Rules 8.1(e), 8.2(e) and 8.4(c).

Amended May 7, 1975, effective Aug. 1, 1975.

RULE 8.6 Denial of speedy trial

Violations. If the court determines after considering the exclusions of Rule 8.4, that a time limit established by Rules 8.2(a), 8.2(c), 8.2(d), 8.3(a), 8.3(b)(2), or 8.3(b)(3) has been violated, it shall on motion of the defendant, or on its own initiative, dismiss the prosecution with or without prejudice.

Amended May 7, 1975, effective Aug. 1, 1975.

RULE 14. Transfer Hearing; Order

(a) The transfer hearing shall include evidence of the offense alleged, unless waived, and of the transfer investigation report. At the conclusion of the transfer hearing, the court shall determine whether an offense has been committed and that probable cause exists to believe that the child committed the offense alleged. If the court finds such probable cause or evidence of probable cause has been waived, upon its own motion or the motion of any interested party, it may order, in addition to the transfer investigation, an investigation including a mental and physical examination of the child, to be made by a public or private agency, or by a person qualified to make such examinations.

(b) The court may transfer the action for criminal prosecution to the appropriate court having jurisdiction of the offense if the court finds probable cause and reasonable grounds to believe that:

(1) The child is not amenable to treatment or rehabilitation as a delinquent child through available facilities; and

(2) The child is not commitable to an institution for mentally deficient, mentally defective or mentally ill persons; and

(3) The safety or interest of the public requires that the child be transferred for criminal prosecution.

(c) Upon such transfer the juvenile court shall state the reasons therefor by minute entry or written order and the child shall thereupon be transferred to the custody of an appropriate law enforcement officer, released on bail, if the offense is bailable, or released upon his own recog-

nizance.

(d) If the action is not transferred, the judge shall proceed to hear and dispose of the action or assign the hearing to another judge, court commissioner or referee.